IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5055 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ADARSH SANSKAR DHAM BHILOT THRO GIRISH PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5055 of 2003

MRS NISHA M PARIKH for Petitioner No. 1

MS NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 20/12/2003

ORAL JUDGEMENT

Rule. Ms Nandini Joshi, learned AGP waives service of Rule for the respondents.

In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The petitioner-institution was granted permission vide order dated 1.1.1998 (Annexure "A") for establishing a hostel for 20 boys belonging to Scheduled Castes,

Scheduled Tribes and Socially & Educationally Backward Classes and 10% of 20 belonging to upper castes who have income less than Rs.3,600/- per annum. The order also contained certain other conditions. The petitioner was to be given grant for running the hostel. However, the Director of Tribal Development passed order dated 10.4.2000 (Annexure "C") cancelling the permission on the ground that the petitioner had not complied with the conditions of permission and that the hostel was closed on 2.3.2000 when the squad had visited the site and also on the ground that at the time of visit by the District Social Welfare Officer, Patan on 17.2.2000, the hostel was closed.

3. Aggrieved by the above order, the petitioner went in appeal before the State Government. The State Government passed order dated 9.8.2000 after accepting the submission made by the petitioners that the hostel was established in June, 1998 and the students were admitted from June, 1998, but on account of non-receipt of grant for a long period resulting into financial facilities, the hostel could not be run from January, 2000 onwards. The State Government also referred to the file of the Director, Tribal Welfare Department and noticed that on 14.7.1998 there were 29 students against the sanctioned strength of 20 and that out of those 29 students enrolled, 19 students were present. The State Government, therefore, appreciated the difficulties of the petitioner-institution that if no grant is given for two years, no institution in such backward area like a village in Radhanpur Taluka of Patan District could continue to run a hostel and shoulder the expenses for lodging and boarding of 20 students. The State Government took a very reasonable and pragmatic view and modified the Director's order and directed the Director to pay the petitioner grant for the years 1998-99 and 1999-2000 after scrutiny of the number of students who remained present at the hostel. The State Government further ordered that the permission for the year 2000-01 be continued.

4. It appears that inspite of the aforesaid clear order of the State Government, the Director did not release the grant for the years 1998-99 and 1999-2000 on the ground that the hostel was closed from June, 1999.

It is not clear why the Director did not release any grant even for the year 1998-99 inspite of the aforesaid direction given by the State Government in the order dated 7/9.8.2000. Even while considering the question of releasing grant for the year 1998-99, the

Director kept harping on the reports of the District Social Welfare Officer, Patan and statements of parents and principal of Uttar Buniyadi Vidyalaya and the Sarpanch of the village who stated that the hostel was closed from June, 1999. It appears that the Director did not at all appreciate the purport and the thrust of the order of the State Government in appeal passed on 7/9.8.2000 that the petitioner-institution was finding it difficult to run the hostel without financial aid and, therefore, if the Director had atleast released the grant for the year 1998-99, the situation could have been salvaged and the petitioner could have continued to run the hostel for the year 2000-2001 atleast. In view of the aforesaid stand adopted by the Director, the petitioner appears to have been unable to run the hostel even in the year 2000-01 or thereafter and that has again been used as a ground by the Director to cancel the permission altogether by the impugned order dated 6.9.2002 (Annexure "J"). Unfortunately, the State Government Officer who heard the petitioner's appeal against the aforesaid order dated 6.9.2002 has passed a laconic and cryptic order dated 11.3.2003 without even referring to the Government's previous order dated 9.8.2000 and without making any attempt to appreciate the difficulties of the petitioner and the financial condition and the stalemate brought about by non-release of grant for the year 1998-99. It is not that there are several institutions who are ready to establish hostels in the area and the Government, therefore, cancelled the permission granted to the petitioner and another institution has come forward to run the hostel.

5. The learned counsel for the petitioner states that the petitioner had taken the premises in question on rent and the rent is being paid by the petitioner-institution right from June 1998 onwards. It is also clear that the petitioner has managed to spend on its own for the lodging and boarding of students during the year 1998-99 and if the encouragement grant contemplated by the permission order dated 1.1.1998 had been released within a reasonable time, the petitioner would have been able to continue to run the hostel. It is true that there were some deficiencies earlier pointed out by the Director regarding the facilities to be provided, but for want of funds the petitioners could not initially provide all the facilities. If the respondent authorities had taken a more pragmatic stand only in order to ensure that the students belonging to Scheduled Castes and Scheduled Tribes and other backward class students in a backward rural area in a border area can stay in the hostel and pursue their education, the

present unfortunate situation could have been averted.

6. In view of the above, this petition is allowed. The order dated 6.9.2002 (Annexure "J") passed by the Director of Tribal Development cancelling the permission granted to the petitioner-institution to run the hostel and the order dated 11.3.2003 (Annexure "L") passed by the State Government confirming the order dated 6.9.2002 of the Director are quashed and set aside. The respondents are directed to release the grant in favour of the petitioner-institution for the year 1998-88 and permit the petitioner-institution to run the hostel as per the permission order dated 1.1.1998 (Annexure "A"). As far as the calculation of the grant for the year 1998-99 is concerned, the respondents shall calculate the grant on the basis of the number of students enrolled or the maximum number of students permitted to be enrolled, whichever is less.

The grant as aforesaid shall be released within one month from the date of receipt of the writ of this Court and it will be open to the petitioner to complete all the facilities within one month from the date of actual receipt of the grant and the petitioner shall run the hostel in accordance with the terms and conditions specified in the permission order dated 1.1.1998.

Thereafter it will be open to the Director of Tribal Development to depute an officer, not below the rank of Deputy Director, to inspect the hostel personally and submit a report to the Director of Tribal Development about the facilities being provided in the hostel.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.S. Shah, J.)

sundar/-